



# **WEBINAR SERIES ON ROUTES TO IMMIGRATION STATUS FOR NON-CITIZEN CRIME SURVIVORS**

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# **Bringing in Family Members Living Abroad and Preparing the Adjustment of Status Application**

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# **At the end of this session, you will be better able to...**

1. Identify any potential qualifying relatives eligible for benefits at the time of adjustment
2. Preempt potential RFE and roadblocks as it relates to family members
3. Assist qualifying relatives entering the United States

# Important Resources

- 2016 VSC Practice Advisory
- ICWC Zoho Database on Consular Processing  
<http://icwclaw.org/services-available/icwc-u-travel-and-certifier-database/>
- Foreign Affairs Manual  
<https://fam.state.gov/>
- ILRC Videos on Consular Processing

**ELIGIBLE DERIVATIVES**

# HYPOTHESIS

Your client Sofia has a 4 year U visa expiring in May 2017. You filed for adjustment. She asks if you could help her “other daughters.” She misunderstood your question about children when you asked because she thought you were only asking for the ones living in the USA. What do you do if she tells you that she has 2 more daughters abroad?

- Her daughter Anita will turn 19 in April 2017 when the Supp. A was never filed for her?
- Her other daughter will turn 21 in May
  - She just found out that she is 6 months pregnant, what else could you do?

# Derivatives

## When applying for U visa

### If applicant is < 21:

- spouse, children, parents and unmarried siblings under age 18

### If applicant > 21:

- spouse, minor children (unmarried and under 21)

**Note:** VAWA 2013 Age-out Protections apply

## In context of I-929

### If applicant is < 21:

- spouse, children, parents

If applicant > 21: spouse (including if the marriage occurred AFTER the U grant) and minor children (unmarried and under 21)

**Note:** NO Age-out Protection for derivatives

# I-929 Requirements

- Principal has U visa based LPR status or application for adjustment pending
- Eligible family member (see previous)
- You or family member will suffer extreme hardship if not allowed to remain in or enter the US
- Establish discretion should be exercised in favor of family member

# Important Considerations

- I-929 process only available to those who NEVER had U visa status
- NO Age-OUT protections: Child must remain unmarried and under 21 until I-929 approved.
- NO I-192 for Inadmissibility Required
- I-929 will not be decided until U-1 adjustment approved.

# Timing Issues

- During AOS (U-1 about to expire and determining best strategies)
  - I-918 about to expire
    - I-539 + AOS- hold in abeyance- cross reference
  - QR minors close to age out
  - QR minors way under 21

# U Visa Extensions – I-539

- For whom do you file and when?
- If filing late:
  - the delay was due to extraordinary circumstances beyond your control;
  - The length of the delay was reasonable;
  - You have not otherwise violated your status;
  - You are still a bona fide nonimmigrant; and
  - You are not in removal proceedings.

# U Visa Extensions – I-539- cont.

- Filing fee (or request for a fee waiver)
- Supporting documents directly with the VSC regardless of geographical jurisdiction.
  - Evidence of U status for both principal and derivative, showing all dates in that status;
  - Evidence of adjustment of status of the principal (if applicable);
  - Evidence of relationship with U visa principal;
  - Applicant's statement of need and reason (s) for extension.

# **PREVENTING PROBLEMS**

# Determine Logistics

Work with Client in advance about the process

– When to file?

– What to file?

- Forms : I-918A, I-912?

- Proof of Qualifying Relationships

  - BC issues: names, no names, wrong names!!!!

– What are the other outstanding issues?

- Custody issues for passports

- Inadmissibility issues for derivatives

# Common RFE issues at VSC

- Birth certificate, passport
- Missing documents
- Fingerprints- consideration as abandoned application
- Criminal history and immigration violations

# Common Issues at Consulate

- Proof of veracity of birth certificate
- Proof of relationship
  - Honduras, El Salvador (request for DNA, proof of on-going relationship, etc.)
- Medical concerns
  - Drugs, alcohol dependency- teens, gang involvement
  - Prior immigration history
- Waivers not requested

# Avoid Problems Up Front

- Identify inconsistencies
  - Determine if they are a problem
    - i.e. Are they material? If not, identify the inconsistency and address why it is NOT material.
- If the inconsistencies or gaps are material, how would they best be addressed?
  - E.g. Declaration from client, statement from doctor, “partera” , family member, consulate?
  - Explain what are you doing and how much time it may take, keep the case alive
  - Reach out for help! (VAWA experts, attorneys from other countries, civil registry, consulates...).

# Biometrics

- No fee
- No U if 14 years or older without your bios
- Know your consulate
  - Electronic or ink depending on counter service
- Card sent to VSC for FBI and checks
- If close to missing appointment, reschedule
- If appointment missed, case will be terminated due to abandonment
  - May be able to reopen

# Passport Validity

- Passport must be valid for 6 months beyond initial period of stay
  - Exceptions for certain A, G and NATO visas or if
  - The passport requirement has been waived under **INA 212(d)(4); See 9 FAM 403.9-3(B)(1)**
- But what about U visa context?
  - Must have reason for not obtaining passport
  - On case by case basis, may use Form DS-232 to issue U visa in absence of passport for U visa

# Key Resources

- FAM: Document Availability
  - [www.travel.state.gov/visa/reciprocity/index.htm](http://www.travel.state.gov/visa/reciprocity/index.htm)
- Information on Embassies and Consulates
  - <http://www.usembassy.gov/>

# **CONSULAR PROCESSING –AFTER APPROVAL**

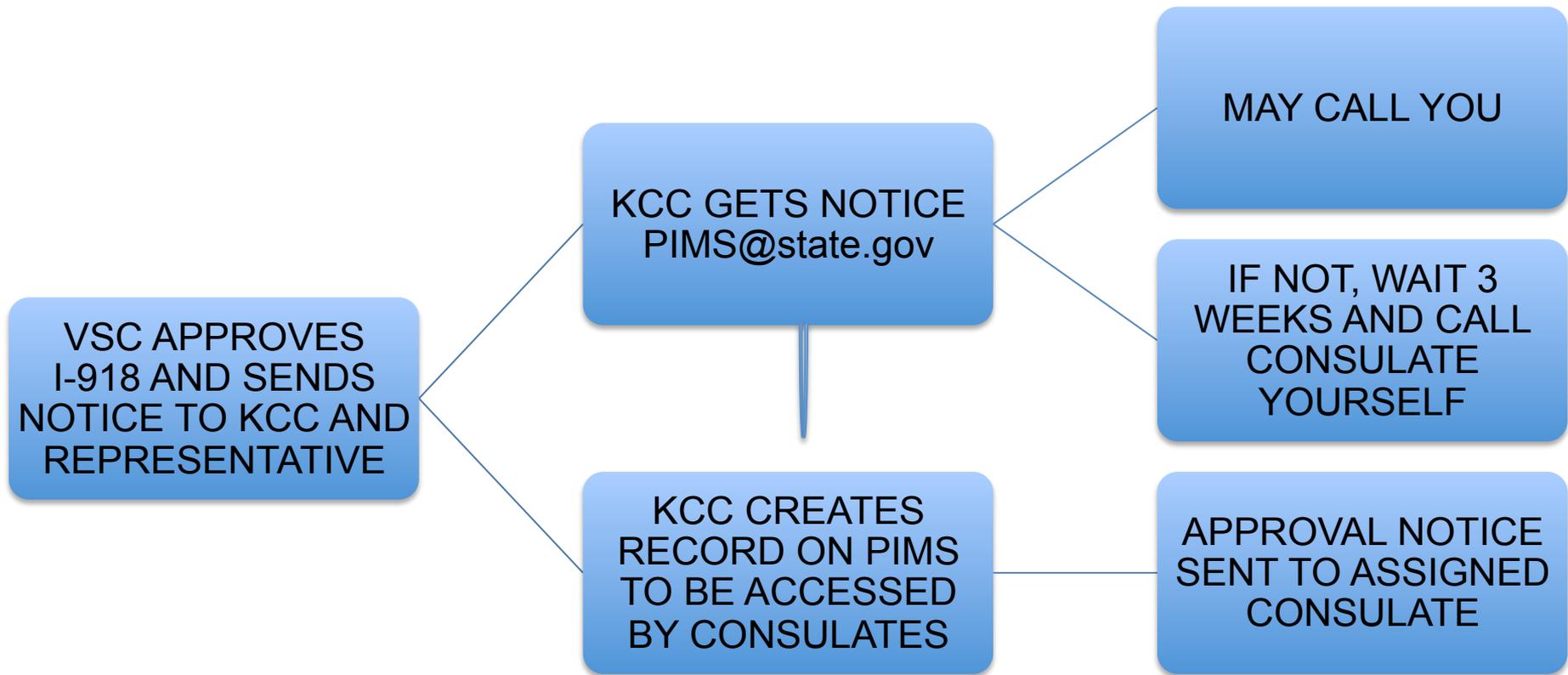
# Ready to go?

- Completed the DS-160
- Print and keep the DS-160 barcode page
- Visit the [U.S. Embassy or Consulate website where you will apply for additional country-specific instructions.](#)  
[Schedule an interview appointment; and](#)
- [Pay the visa application processing fee.](#)

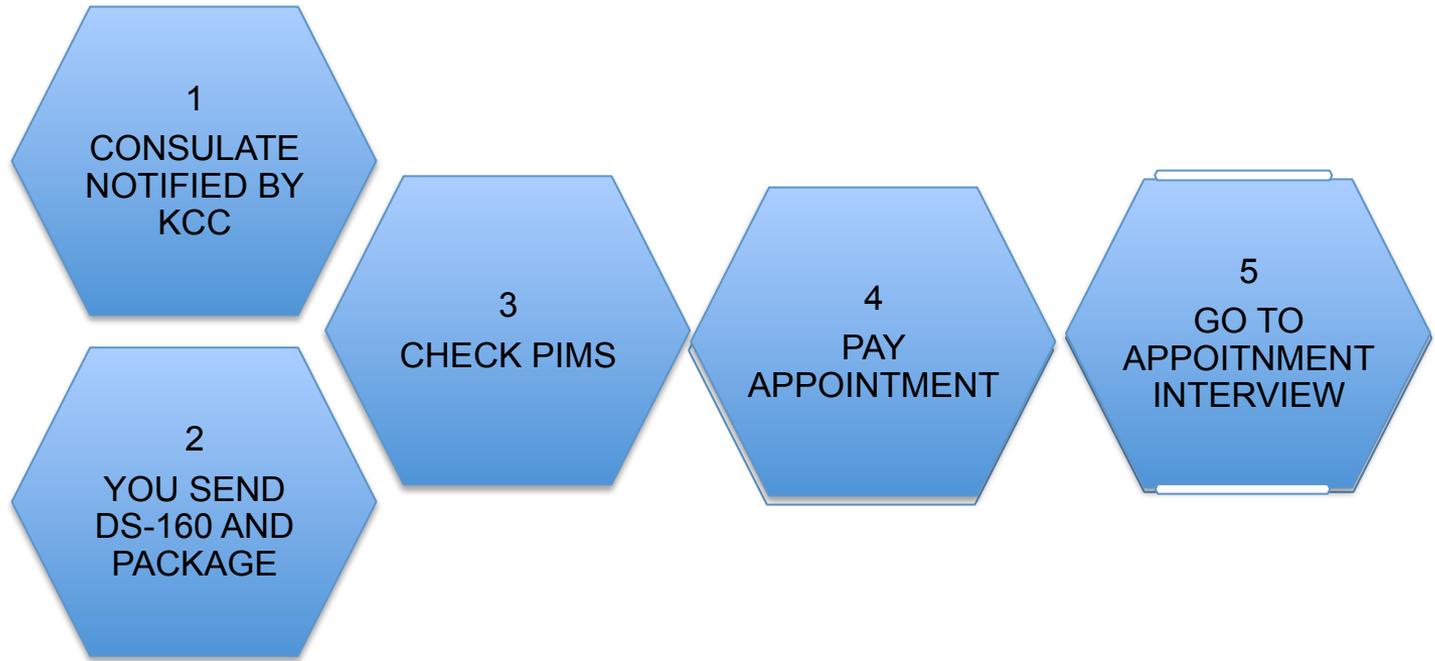
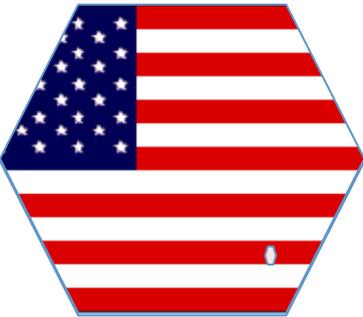
# Evidence Forming Basis for U Visa Issuance

- Post use PIMS created by KCC to verify approval
- Form I-797 Notice of Action may be sufficient proof to schedule appointment
- Instructions:
  - In the event PIMS does not yet contain the record, send an e-mail **to [PIMS@state.gov](mailto:PIMS@state.gov)**. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.

# The Motions of Consular Process



# STEPS





# RESOURCES

Website: [www.asistahelp.org](http://www.asistahelp.org)

Questions or technical assistance?

Questions@asistahelp.org

Join VAWAExperts and VAWAUpdates lists  
serve

**THANK YOU FOR  
YOUR PARTICIPATION**